

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of new	)	NOTICE OF ADOPTION AND
Rule I and the amendment of ARM	)	AMENDMENT
37.75.101, 37.75.102, 37.75.105,	)	
37.75.108, 37.75.109, 37.75.201,	)	
37.75.202, 37.75.205, 37.75.206,	)	
37.75.209, 37.75.301, 37.75.302,	)	
37.75.303, 37.75.401, 37.75.402,	)	
37.75.501, 37.75.502, 37.75.601,	)	
37.75.602, and 37.75.603 pertaining to	)	
Child and Adult Care Food Program	)	
(CACFP)	)	

TO: All Interested Persons

1. On November 10, 2005 the Department of Public Health and Human Services published MAR Notice No. 37-358 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules relating to the Child and Adult Care Food Program (CACFP), at page 2168 of the 2005 Montana Administrative Register, issue number 21.

2. The Department has amended ARM 37.75.102, 37.75.105, 37.75.108, 37.75.109, 37.75.201, 37.75.202, 37.75.205, 37.75.209, 37.75.301, 37.75.302, 37.75.303, 37.75.402, 37.75.501, 37.75.502, 37.75.601, 37.75.602, and 37.75.603 as proposed.

3. The Department has adopted the following rule as proposed but with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I (37.75. 103) CHILD AND ADULT CARE FOOD PROGRAM  
(CACFP): FEDERAL REGULATIONS ADOPTED BY REFERENCE (1) The CACFP ~~program~~ shall be administered in accordance with the requirements of federal law governing the ~~e~~Child and ~~a~~Adult ~~e~~Care ~~f~~Food ~~p~~Program as set forth in Title 7 CFR part 226 (2005), which regulates all state child and adult care food programs. Title 7 CFR part 226 (2005) is adopted and incorporated as a part of these rules. A copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Child and Adult Care Food Program, P.O. Box 202925, 111 North Jackson Street, Fifth Floor, Helena, MT 59620-2925 or through the federal government website access at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

4. The Department has adopted the following rules as proposed but with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.75.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) through (13) remain the same.

~~(14) "Disciplinary action" means an action taken for the purpose of modifying behavior or correcting a situation or circumstance.~~

(15) through (30) remain as proposed but are renumbered (14) through (29).

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

37.75.206 RECRUITMENT (1) through (3) remain as proposed.

(4) Disciplinary Corrective action will include the following:

(a) through (5) remain as proposed.

(6) A disciplinary corrective action for active recruitment will remain in effect ~~through each three year contract renewal period.~~ from the date of violation for three years. ~~At the inception of a new contract renewal period,~~ Three years after the original violation, the violation cycle will start over, with the exception that, if a third recruiting violation occurs, the minimum one year cap on enrollment may continue into the following contract three year period. An example is:

(a) ~~the an original contract period is effective October 1, 2005 through September 30, 2008~~ violation occurs on November 1, 2006;

(b) ~~the a third recruiting violation occurs on June 30, 2008~~ October 30, 2009;  
and

(c) ~~enrollment is capped from June 30, 2008 through June 30, 2009~~ October 30, 2009 through October 30, 2010, extending into the following ~~contract renewal~~ three year period.

(7) When a third recruiting violation occurs and enrollment is capped for one year for a period which spans two ~~contract terms~~ three year periods, the violation will count as the third violation in the previous ~~contract term~~ three year period and will not count as the first violation in the ~~new contract term~~ next three year period.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

37.75.401 SPONSOR AND FACILITY TRAINING AND TRAINING RECORDS (1) through (3) remain as proposed.

(4)(a) and (b) remain as proposed.

(c) a sign in sheet signed by each training session participant; or

(d) a copy of the certificate of completion for online training, signed by the sponsor's authorized representative.

(5) through (7) remain as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

5. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: Will the Department's address in Rule I (ARM 37.75.103) be corrected in the adoption notice?

RESPONSE: Yes, the new address for the division has been included in the adoption notice since the division moved after the proposal notice was published.

COMMENT #2: Commentor questions the disciplinary action definition. Should it be corrective action instead?

RESPONSE: The Department agrees and the definition for disciplinary action is deleted. Please refer to the term "corrective action plan" and its definition. The term "disciplinary" has been replaced with "corrective" action throughout the rule.

COMMENT #3: In ARM 37.75.101(25) regarding the definition for a seriously deficient institution, is an institution a center or can they be different? Does an institution mean a center or a sponsor?

RESPONSE: The definition for institution is provided in ARM 37.75.101. An Institution is a sponsor of day care homes, a sponsor of centers, or a center under contract with the Department.

COMMENT #4: Should ARM 37.75.205(2) (b) (iii) read parent-signed record keeping instead?

RESPONSE: Not all record keeping involves parent signatures; therefore the rule is not changed. Records which must include parent signatures are specified in the Sponsor-Provider Agreement, which is signed by both the sponsor and the provider. The agreement is sufficient for CACFP enforcement purposes.

COMMENT #5: In ARM 37.75.205(8) on retaining records, does the three year retention pertain to the records of a provider who quits?

RESPONSE: Yes, the federal regulation states that all records, including those of providers no longer participating, which relate to the CACFP, must be retained for three federal fiscal years, plus the current year of participation.

COMMENT #6: In ARM 37.75.206(4) (b) (i), does this provision include switching providers?

RESPONSE: Yes, as specified by ARM 37.75.206(4) (b) (ii).

COMMENT #7: Is the three year contract specified in ARM 37.75.206(6) going to

change to five year contracts?

RESPONSE: No, the contract period is changed to a seven year period, with updated and/or renewal information collected annually by the Department. The rule is changed for clarity to read three year period rather than three year contract renewal period.

COMMENT #8: Should serious deficiency be added with corrective action in ARM 37.75.209(5)?

RESPONSE: The rule includes all corrective actions, including any corrective action precipitated by a finding that rises to the level of "serious deficiency". As the rule is inclusive of all corrective action, no change is being made.

COMMENT #9: In regards to ARM 37.75.401(4) (c), online training participants don't necessarily sign in or have a signoff sheet. How will this be handled?

RESPONSE: The department agrees with the comment and has added subsection (d) to the rule to address this circumstance.

COMMENT #10: Does an institution mean centers and sponsors in ARM 37.75.502(2)?

RESPONSE: No, institution in this rule is applicable, as stated in the title of the rule, to Reviews of Centers and Sponsors of Centers. The definition for institution is provided in ARM 37.75.101. An institution is a sponsor of day care homes, a sponsor of centers, or a center under contract with the Department.

COMMENT #11: Does an institution mean centers and sponsors in ARM 37.75.502(5)?

RESPONSE: No, institution in this rule is applicable, as stated in the title of the rule, to Reviews of Centers and Sponsors of Centers. The definition for institution is provided in ARM 37.75.101. An institution is a sponsor of day care homes, a sponsor of centers, or a center under contract with the Department.

COMMENT #12: Commentor doesn't see in ARM 37.75.601 on recruitment a statement that a sponsor can only sponsor three at a time. Shouldn't this be added to the rule?

RESPONSE: Commentor is possibly confused in that no more than three providers may switch from one sponsor to another sponsor within any particular month as stated in the Department's CACFP Policy SH MT CACFP 98-4, Rev. 1, which addresses this issue. Federal regulation [7 CFR 226.15(m)] states "Each institution must comply with all regulations issued by FNS and the Department, all instructions and handbooks issued by FNS and the Department to clarify or explain existing regulations, and all regulations, instructions and handbooks issued by the State

agency that are consistent with the provisions established in Program regulations."  
No change is being made.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State January 30, 2006.